

Message Text

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E. O. 11652: N/A
TAGS: PGOV, SHUM, CI
SUBJECT: MORE "MERCURIO" LEGAL COMMENTARY ON EXTRADITION

REF: SANTIAGO 6016

1. SUMMARY: AUGUST 10'S "EL MERCURIO" CONTINUES THE JURDICAL ANALYSIS BEGUN AUGUST 6 (REFTEL) OF CHILEAN LAW AS APPLICABLE TO THE LETELIER CASE. THE ANALYSIS RAISES AND THEN REJECTS A NUMBER OF ARGUMENTS AGAINST EXTRADITION AND SEEMS TO INDICATE THAT UNLESS THE ACCUSED ARE TRIED IN CHILE THEY SHOULD BE HANDED OVER TO THE USG -- IF, THAT IS, THE SUPREME COURT IS "CONVINCED" OF THEIR POSSIBLE INVOLVEMENT. END SUMMARY.

2. "EL MERCURIO" STARTS OFF BY OBSERVING THAT A FORMAL REQUEST FOR EXTRADITION IS THE APPROPRIATE AND NECESSARY NEXT STEP ONCE SOMEONE HAS BEEN OFFICIALLY INDICTED. NOTING THAT STARE DECISIS DOES NOT CONTROL UNDER ROMAN LAW, THE ARTICLE MAKES THE POINT THAT PRECEDENT NONTHELESS IS AN IMPORTANT FACTOR FOR CHILEAN COURTS. THE SUPREME COURT HAS DEALT WITH NUMEROUS EXTRADITION REQUESTS AND BUILD A BODY OF JURISPRUDENCE THAT IT CAN SCARCELY
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IGNORE.

3. A BASIC TENET OF CHILEAN LEGAL PRACTICE HOLDS THAT: "THE PURPOSE OF EXTRADITION IS TO AVOID IMMUNITY FOR CRIMES AND ITS JUSTIFICATION RESTS UPON THE MODERN PRINCIPLE OF MUTUAL ASSISTANCE AMONG STATES TOWARD THIS END". THUS, IF THE COURT IS CONVINCED THAT CHILEANS PARTICIPATED IN A CRIME AND IF THEY CANNOT

BE TRIED IN CHILE, THEY SHOULD BE YIELDED UP. THE ARTICLE ASSERTS THAT THE COURT HAS NOT BEEN CLEAR ABOUT HOW ENERGETICALLY IT SHOULD EXAMINE OR DIG FOR EVIDENCE OF GUILT. ON BALANCE, HOWEVER, BEFORE GRANTING EXTRADITION THE COURT SHOULD PROBE DEEPLY ENOUGH TO BE "CONVINCED" OF THE LIKELIHOOD THAT THE ACCUSED WERE INVOLVED IN THE CRIME.

4. "MERCURIO" BELIEVES THAT THE COURT WILL NOT DENY EXTRADITION SOLELY ON THE BASIS THAT THE BILATERAL TREATY DOES NOT OBLIGE THE GOC TO HAND ITS CITIZENS OVER TO THE USG. IN CHILEAN JURISPRUDENCE

THE ONLY GROUNDS FOR NOT GRANTING EXTRADITION WOULD BE EVIDENCE THAT THE REQUESTING COUNTRY'S JUDICIAL SYSTEM DOES NOT MEET INTERNATIONAL NORMS. FURTHERMORE, REFUSAL TO EXTRADITE ON THE BASIS OF NATIONALITY WOULD VYWNG INTO PLAY THE BUSTAMANTE CODE'S REQUIREMENT TO TRY THE ACCUSED IN CHILE (CHILE'S ADHERENCE TO THAT TREATY CONTROLLING EVEN THOUGH THE USG IS NOT A SIGNATORY).

5. "MERCURIO" NOTES THAT MILITARY AND POLITICAL CRIMES ARE NOT EXTRADITABLE. IT DISMISSES A DEFENSE BASED ON MILITARY CRIMES IN THE INSTANT CASE BUT ADDS THAT THE DEFINITION OF POLITICAL CRIME IS NOT CLEAR. IT SUGGESTS, HOWEVER, THAT A DEFENSE BASED UPON AN ASSERTION THAT THE CRIME WAS POLITICAL WOULD BE UNLIKELY TO PROSPER.

6. TURNING TO THE QUESTION OF JURISDICTION, "MERCURIO" STATES LIMITED OFFICIAL USE

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THAT THE ALLEGED CRIMINAL ACTS OCCURRED IN SEVERAL JURISDICTIONS (THE INDICTMENT MENTIONING SEVERAL US STATES AND THE DISTRICT AS WELL AS CHILE AND OTHER UNSPECIFIED PLACES). TO DETERMINE JURISDICTION FOR SUCH "CRIMES AT A DISTANCE" (DELITOS A DISTANCIA), MANY LAWYERS RELY UPON ARTICLE 302 OF THE BUSTAMANTE CODE, GIVING JURISDICTION TO THE COURTS OF THE PLACE WHERE THE CRIME WAS CONSUMATED (I.E., WASHINGTON). "OTHERS", HOWEVER, WOULD ASSERT THAT ARTICLE 3 OF THE MILITARY CODE OF JUSTICE IS CONTROLLING. THIS ARTICLE REQUIRES MILITARY COURTS TO HEAR CHARGES AGAINST MILITARY FOR CRIMES COMMITTED ABROAD "IN EXERCISE OF THEIR FUNCTIONS". THE QUESTION WOULD THEN BE, NOTES "MERCURIO", "WHEN IS A MILITARY MAN DELINKENT IN THE EXERCISE OF HIS FUNCTIONS"?

7. COMMENT: ALTHOUGH THE "MERCURIO" ARTICLE POINTS OUT PLENTY OF LEGAL PLOYS AVAILABLE TO THE ACCUSED AND IMPLICITLY SUGGESTS THAT THE PROCESS WILL BE TIME CONSUMING, IT DOES APPEAR TO CUT THROUGH THE LESS PLAUSIBLE ARGUMENTS AGAINST EXTRADITION. IF THE EVIDENCE OF PROBABLE GUILT IS CONVINCING, THE ARTICLE MAKES CLEAR THAT THE ONLY ALTERNATIVE TO EXTRADITION IN KEEPING WITH CHILEAN LEGAL TRADITION IS TRIAL HERE.

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